IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21-04-2006

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MRS. JUSTICE CHITRA VENKATARAMAN

WRIT PETITION No.17884 OF 2003

P. Raman,
S/o. Periyasamy Devar .. Petitioner

Vs.

1. The Asst. Educational Officer,
   Thiruparankundram.

2. The District Educational Officer,
   Madurai.

3. The Chief Educational Officer,
   Madurai.

4. The Joint Director of School Education,
   Chennai 6.

5. Registrar,
   Tamil Nadu Administrative Tribunal,
   City Civil Court Buildings,
   High Court Compound, Chennai 104... Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of writ of certiorari calling for the records connected with order of Tamil Nadu Administrative Tribunal in T.A.No.38/97 dated 4.4.2003 and to quash the said order.

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For Petitioner : Mr.R. Ganesan

For Respondents 1 to 4 : Mr.S. Gomathynayagam
Special Govt. Pleader

J U D G M E N T

P.K. MISRA, J

The facts giving rise to the present writ petition are as follows :-

Petitioner initially joined as a teacher on 31.3.1967 and subsequently he acquired Secondary Grade training in 1968 and was appointed as Secondary Grade Teacher with effect from 1.6.1972. He was posted as Headmaster in Panchayat Union Middle School, Erkudi of Tiruparankundram Panchayat Union by order dated 11.7.1983 issued by the District Educational Officer, Madurai (present Respondent No.2). While he was so working, an order dated 18.9.1986 was issued by the District Educational Officer, Madurai, posting the petitioner as Headmaster, Panchayat Union Elementary School, Periya Alangulam. At that stage, the petitioner filed W.P.No.10148 of 1986. In such writ petition, it was contended by the petitioner that the Headmaster of a Middle School is a higher post than that of the Headmaster of a Primary School, which entitles the occupant to increased pay of 5% of the basic pay and allowances, which is not admissible to the Headmaster of a Primary School or Headmaster of an Elementary School. It was therefore contended by the petitioner that such order was in fact an order of reversion which resulted in the petitioner being deprived of increase of 5% of basic pay and allowances and the duty allowance of Rs.35/- per month. In such writ petition, W.M.P.No.15268 of 1986 was filed, wherein a learned single Judge of this Court passed an order of stay of operation of all further proceedings pursuant to such impugned order. Pursuant to the said order dated 25.9.1986, the second respondent issued a further order on 29.9.1986 cancelling such posting and transfer. In view of such order passed by the Court and obeyed by the second respondent, the petitioner continued in the said post. Subsequently, the Advocate of the petitioner issued a notice dated 24.8.1987 claiming that the petitioner has assumed office as Headmaster of Panchayat Union Middle School, Erkudi pursuant to the order dated 11.7.1983. It was further indicated that the petitioner had passed B.A., in 1985 and acquired B.Ed., in June 1987. It was further indicated that the petitioner

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having been appointed as Headmaster during July 1983, he should be paid the scale of pay applicable to Headmasters of Middle Schools and he should also be paid B.Ed., scale from 1.9.1987, after he had acquired B.Ed., degree. However, since no order was passed, the petitioner subsequently filed W.P.No.3365 of 1988 in the High Court praying for issuing writ of Mandamus directing the respondents to revise his scale of pay applicable to Headmasters of Middle Schools with effect from 11.7.1983 and B.Ed. scale with effect from 1.9.1987 along with special pay.

2. A counter affidavit was filed in W.P.No.3365 of 1988, wherein it was indicated that the petitioner was posted as Primary School Headmaster in the cadre of Secondary Grade Headmaster in Tirupparankundram Panchayat Union School, Erkudi and that only Secondary Grade Assistants were posted as Primary School Headmaster and allowance of Rs.5/- (subsequently increased to Rs.15/-) was only required to be paid as special allowance. The claim of the petitioner was refuted and it was contended that he was not entitled to hold the post of Headmaster of Middle School. It was further indicated that the petitioner was not entitled to receive the scale of Secondary Grade Headmaster as the Panchayat Union Middle School, Erkudi is an incomplete Middle School and there was no sanctioned Secondary Grade Headmaster post in the school and the petitioner was permitted to continue in that school since he was getting only the Secondary Grade teacher with the Headmaster allowance of Rs.15/-. Regarding the petitioner's claim of getting B.T. post on acquiring B.Ed., degree, it was indicated that the petitioner was not senior enough to get such scale. It was further indicated in the counter affidavit that the students strength in Class VI did not justify the opening of Class VII and Class VIII and such classes VII and VIII were subsequently opened without approval. It was further highlighted in the counter affidavit that 37 persons were senior to the petitioner and the petitioner was not entitled to get B.T. scale nor the scale of Headmaster of the Middle School.

3. After establishment of the Tamil Nadu Administrative Tribunal, such writ petition was transferred to the Tribunal and was renumbered as T.A.No.38 of 1997. The Tribunal dismissed the petition by coming to the conclusion that initially when the petitioner was transferred and posted as Headmaster such school was only a Panchayat Union Elementary School and the proposal to upgrade the same to the Middle School was mooted. It was further indicated:-

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"... At that time when the applicant was posted as Headmaster in Erkudi School, it was only an Elementary School and by mistake only it has been mentioned that he is posted as Headmaster of Middle School. The petitioner himself does not claim that he has attained sufficient seniority to be posted as Headmaster by that time. Therefore, when the school was actually upgraded as Middle School in 1987, the applicant has been correctly transferred and posted as Panchayat Union Elementary School Headmaster. The applicant cannot have any grievance of his transfer and posting as Elementary School Headmaster because he has not been actually reverted.

3. The applicant was previously only working as Elementary School Headmaster and now that Elementary School has been upgraded as Middle School, the seniormost person who is eligible to be appointed as Middle School Headmaster only can be posted. Since the applicant has not attained sufficient seniority, he cannot continue or allowed to work as Headmaster in the Erkudi Middle School after its upgradation. Therefore, the applicant was rightly posted as Elementary School Headmaster to which only he was then eligible. It must be remembered that in 1986, the post of Elementary School Headmaster and that of a Secondary Grade Assistant is one and the same. So, the applicant could have been posted either as Secondary Grade Teacher or Headmaster of Elementary School. It makes no different and this has been done. The applicant never claim to be posted as Headmaster of Middle School. Therefore, the reversion is very much justified and correct. Therefore, the application is liable to be dismissed."

4. Against the aforesaid decision of the Tribunal, the present writ petition has been filed.

5. The main contention of the petitioner is to the effect that it is immaterial as to whether the Elementary School had become a full-fledged Middle School or not and the fact remains that the petitioner was posted and functioned as Headmaster of the Middle School. It is further stated that rightly or wrongly an order of stay had been passed by the High Court, by virtue of which the petitioner continued as Headmaster even after the School

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had become "full-fledged" Middle School and, therefore, the petitioner was at least entitled to the salary for the period during which he actually functioned as Headmaster of the Middle School.

6. So far as the reversion of the petitioner as Headmaster of an Elementary School is concerned, even though such a matter was not directly in issue, the Tribunal has observed that there is no illegality in such order, obviously because there were many other senior Secondary Grade Teachers and the petitioner could not have been promoted above such teachers. Therefore, the aforesaid conclusion of the Tribunal cannot be found fault with.

7. However, the fact remains that the petitioner had been posted as Headmaster of a Middle School. The order of reversion dated 18.9.1986 itself describes the petitioner as the Headmaster of the Panchayat Union Middle School. Nothing has been brought to our notice that there is difference in pay scale of a "full-fledged" Middle School and an "incomplete" Middle School. Whether the petitioner was eligible to be posted as Headmaster at that stage or not is also not a question before us. The fact remains that rightly or wrongly the petitioner had been posted as the Headmaster of a school which was at least described as an "incomplete" Middle School. Therefore, he should get the salary of a Headmaster of such school. Obviously, the petitioner acquired B.Ed., only in the year 1987 and at that stage there are many other seniors to him and non-grant of B.T. scale to him cannot be characterised as improper or illegal. However, the petitioner is entitled to get salary of a Middle School Headmaster for the period during which he continued by virtue of the subsequent order of stay passed by the High Court. The order passed by the Tribunal is required to be modified to the above extent.

8. Accordingly the order of the Tribunal is modified and it is observed that the petitioner should be paid the salary payable to the Headmaster of a Middle School for the period during which he functioned as Headmaster of the Middle School by virtue of the order passed by the respondents 1 to 4 and even for the subsequent period during which he continued as such by virtue of the order of stay passed by the High Court and till the period when he actually rejoined as Headmaster of Elementary School after disposal of W.P.No.10148 of 1986.

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9. Before parting with the case, we would like to make certain observations regarding grant of stay in such matters. It is obvious that the order dated 18.9.1986, which was challenged in W.P.No.10148 of 1986, was upheld and ultimately such petition was dismissed. By virtue of the interim order of stay passed by the High Court, the petitioner continued as Headmaster of the Middle School, even though he had been posted as Headmaster of the Elementary School, which carried a lesser pay. In other words, though ultimately the petitioner was unsuccessful, he continued to hold a higher post by virtue of the stay order and though ultimately the petitioner's writ petition was decided against him, yet, the petitioner is entitled to get higher pay as he continued to function in the higher post by virtue of the stay order. If no such order would have been passed and ultimately the writ petition would have been dismissed, no such anomalous position would have arisen. On the other hand, if no interim order of stay would have been passed and the writ petition would have been ultimately allowed and the order of reversion would have been quashed, the Court could have always issued a direction that the person should be given all consequential benefits. It is therefore clear that balance of convenience was not in favour of the petitioner. Similarly, if he would have succeeded, the Court could have given a direction regarding payment of arrears and as such no irreparable loss would have been caused to the petitioner if no stay order would have been granted. The Court passing order in such cases should always consider, apart from the question of prima facie case, the question of balance of convenience and irreparable loss. The present case is a glaring example where the petitioner could get the benefit of a higher post which he was found disentitled to as he was allowed to continue in such higher post because of the stay.

10. For the aforesaid reasons, the writ petition is allowed in part and the respondents are directed to pay salary payable to a Middle School Headmaster to the petitioner during the period he continued as such by virtue of the order of stay passed by the High Court and till the period when he actually rejoined as Headmaster of Elementary School after disposal of W.P.No.10148 of 1986.

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The additional amount should be calculated and paid within a period of four months from the date of receipt of the present order. No costs.
dpk

Sd/

Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Asst. Educational Officer,
   Thiruparankundram.

2. The District Educational Officer,
   Madurai.

3. The Chief Educational Officer,
   Madurai.

4. The Joint Director of School Education,
   Chennai 6.

+ one cc to Mr. R. Ganesan, Advocate sr no. 20311

JSK(CO)
NM(27.04.2006)

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